

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
VERONICA G. BALDERAMA-
AGUILAR,
Defendant.

Case No.: 08cr3134-LAB,
18cv1059-LAB
12cr527-RBM and 18cv1052-
RBM

ORDER CONSTRUING SECTION 2255 MOTIONS AS CORAM NOBIS PETITIONS;

ORDER GRANTING CORAM NOBIS PETITIONS; AND

ORDER REQUIRING LODGMENT OF PROPOSED ORDER

Defendant Veronica Balderama-Aguilar pled guilty to violation of 8 U.S.C. § 1326(a), being a deported alien found in the United States, and was sentenced to five years' supervised release. After that term expired, she discovered she is and has always been a United States citizen, making it impossible for her to have committed this offense.

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1 She filed a 28 U.S.C. § 2255 motion, because her conviction in this case
2 might affect her sentencing in another case. The sentencing hearing in that case
3 was originally September 17, but was moved and is now set for October 15.

4 The Court issued an order (Docket no. 50) pointing out that because
5 Balderama-Aguilar is no longer in custody, relief under § 2255 is unavailable. But
6 the Court proposed to construe the motion as a petition for writ of *coram nobis*.
7 Both Balderama-Aguilar and the government were ordered to file responses giving
8 their positions on this proposal, as well as whether *coram nobis* relief should be
9 granted. Both have now done so, and both agree that the petition should be so
10 construed. Balderama-Aguilar proposes that the petition be granted. The
11 government has waived any defense of laches, and does not oppose the granting
12 of the petition.

13 The Court construes the § 2255 motion as a *coram nobis* petition. So
14 construed, and for good cause shown, the petition is **GRANTED**. Balderama-
15 Aguilar's conviction in this case is **VACATED**.

16 Case 12cr527-RBM, *United States v. Aguilar-Balderama*, is related and the
17 government's response treats it as related. The issues and briefing in that case
18 are essentially the same as in this case, which the Court will also treat as related.
19 The Court construes Aguilar-Balderama's § 2255 motion as a *coram nobis* petition.
20 So construed, and for good cause shown, the petition is **GRANTED**. Aguilar's
21 conviction in that case is **VACATED**.

22 Attorney Melissa Lubin's as filed *ex parte* motion for appointment as counsel
23 (Docket no. 54), which the Court is inclined to grant. But she must submit a usable
24 proposed order as required by this District's Electronic Case Filing Administrative
25 Policies and Procedures Manual. Her payment will be subject to this District's CJA
26 limits.

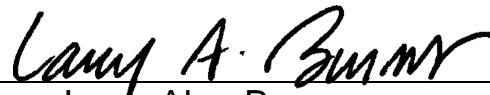
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1 Any other matters on which an order is required should be requested by joint
2 motion, and the parties should lodge a proposed order in editable electronic format.

3 **IT IS SO ORDERED.**

4 Dated: September 18, 2018

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6 Hon. Larry Alan Burns
7 United States District Judge

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